

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Troy Nicholas MacDermott,

File No. 23-cv-3914 (ECT/ECW)

Plaintiff,

v.

ORDER

Federal Bureau of Prisons, *BOP*; and
Collette S. Peters, *Director, BOP*,

Defendants.

Magistrate Judge Elizabeth Cowan Wright issued a Report and Recommendation (“R&R”) on January 30, 2024, recommending that this matter be dismissed without prejudice for failure to prosecute. ECF No. 4. Plaintiff Troy Nicholas MacDermott had been warned when he initiated this action that he would be required to pay the filing fee for this matter or apply for *in forma pauperis* (“IFP”) status within 15 days. More than a month passed, Mr. MacDermott failed to either pay the filing fee or apply for IFP status, and Magistrate Judge Wright subsequently recommended that this action be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure due to Mr. MacDermott’s failure to adequately prosecute this litigation.

Neither party has objected to the R&R, but Mr. MacDermott has filed a motion to equitably toll the filing-fee requirement in this matter due to obstacles he has faced in paying the filing fee. *See* ECF No. 5. But if Mr. MacDermott is unable to pay the filing fee, he could have requested IFP status at any time over the past several weeks, and never has Mr. MacDermott suggested that he is unable to file an IFP application. In any event,

more than fifty days have elapsed since Mr. MacDermott filed this action, and not only has he not paid the filing fee (or applied for IFP status), Mr. MacDermott also has not provided any indication of when he expects to be able to pay the filing fee.

Nevertheless, if Mr. MacDermott were to be prejudiced by dismissal of this action, the deadline for paying the filing fee would be extended. But Mr. MacDermott will not suffer any prejudice from dismissal, because a dismissal under Rule 41(b) for failure to prosecute will not preclude Mr. MacDermott from litigating his claims in future litigation and will not constitute a “strike” for purposes of 28 U.S.C. § 1915(g). Nothing about Mr. MacDermott’s current situation will change if this matter is dismissed without prejudice. Mr. MacDermott can return to federal court and initiate a new lawsuit when he is prepared to pay the filing fee or submit an IFP application. In the meantime, the R&R will be accepted, and this action will be dismissed without prejudice under Rule 41(b). Mr. MacDermott’s remaining motions to appoint counsel and to certify a class will be denied as moot in light of the dismissal of this action for failure to prosecute.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS ORDERED THAT:**

1. The January 30, 2024 Report and Recommendation [ECF No. 4] is

ACCEPTED;

2. The matter is **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure;

3. Plaintiff Troy Nicholas MacDermott's Motion for Equitable Tolling [ECF No. 5] is **DENIED**; and
4. Mr. MacDermott's remaining motions [ECF Nos. 9 & 11] are **DENIED AS MOOT**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: February 21, 2024

s/ Eric C. Tostrud

Eric C. Tostrud

United States District Court